

Supreme Court, U. S.
FILED

FEB 10 1978

IN THE SUPREME COURT OF THE UNITED STATES RODAK, JR., CLERK

October Term, 1977

No. 77-931

R. J. Kunkle, d/b/a R. J. Restoration
Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari
to the Tenth District Court of Appeals
of Ohio

Reply Brief for Petitioner

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ADDITIONAL QUESTION PRESENTED

The Respondent in its Brief in Opposition to the Petition for Writ of Certiorari raises an additional question with regard to the Full Faith and Credit provision of the Constitution of the United States, Article IV, Section 1. Is subject matter jurisdiction presumed and is the burden of proof on the

Petitioner when the Petitioner contests the validity of a purported judgment rendered by a sister state?

ARGUMENT

Petitioner recognizes and agrees with the Respondent that if a judgment is rendered by a Court of general jurisdiction in a sister state and that judgment on its face appears to be valid, then the burden of proof in attacking the validity of that judgment would rest with the Petitioner. Barber v. Barber, 323 U.S. 77, 89 L.Ed. 82, 65 S.Ct. 137 (1944); Williams v. North Carolina, 325 U.S. 226, 89 L.Ed. 1577, 65 S.Ct. 1095 (1945), rehearing denied 325 U.S. 895, 89 L.Ed. 2006, 65 S.Ct. 1650 (1945).

For the burden of persuasion to shift to the Petitioner when the validity of a judgment of a sister state is in issue, the following must be apparent

from the pleadings and the judgment:

"***the duly attested record of the judgment of a state is entitled to such faith and credit in every court within the United States as it has by law or usage in the state from which it is taken. If it appears on its face to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself. ***"
Adam v. Saenger, 303 U.S. 59 (1937), at 62. (Emphasis added)

See also Cook v. Cook, 342 U.S. 126 (1951); Williams v. North Carolina, supra.

In the case at bar Respondent did not meet the above prerequisites for the burden of proof to shift to the Petitioner.

1. The Respondent failed to have the purported Indiana judgment duly attested in compliance with Ohio Civil Rule 44

(Appendix, pages 8-9).

2. The Indiana judgment does not disclose on its face to be rendered by a Court of general jurisdiction. The Indiana Court was, in fact, acting pursuant to a special legislative enactment (§40-1513 of the Indiana Act, Appendix, page 10); therefore, this judgment was rendered by a Court of limited jurisdiction.
3. The Indiana judgment shows that the Petitioner was not served with process prior to the rendering of the judgment and was not given an opportunity to be heard.

From the institution of these proceedings, Petitioner denied the validity of the Indiana judgment as it was invalid on its face. When the invalidity of a

judgment is obvious on its face and the record clearly establishes the irregularities of the alleged judgment, Respondent has not made a *prima facie* case to support a finding that the judgment is valid. Adam v. Saenger, supra, and Cook v. Cook, supra.

Respondent and the Courts below have assumed throughout these proceedings that the judgment was valid on its face thus shifting the burden of proving the invalidity of the judgment to the Petitioner. Examination of the Indiana judgment shows that it is not valid on its face. The obvious invalidity of the alleged judgment requires that it not be entitled to the full faith and credit by a sister state.

CONCLUSION

For the reason stated herein and the reasons submitted in the original

Petition, a Writ of Certiorari should issue to review the judgment of the Tenth District Court of Appeals of Ohio.

Respectfully submitted,



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ADDENDA

In his initial Petition, the Petitioner erroneously indicated that a Petition should issue to the Ohio Supreme Court. Subsequent to the initial filing of his Petition, the Petitioner has been in contact with the Clerk of the United States Supreme court who indicated that she would hand correct the Petition so that it would issue to the Tenth District Court of Appeals of Ohio. On the basis of that representation, Petitioner has indicated on his Reply Brief that the Petition would issue to the Tenth District Court of Appeals of Ohio.

OHIO RULES OF CIVIL PROCEDURE

RULE 44. Proof of official record

(A) Authentication.

(1) Domestic. An official record, or an entry therein, kept within a state or within the United States or within a territory or other jurisdiction of the United States, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record in which the record is kept or may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the attesting person or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may

be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (a) admit an attested copy without final certification or (b) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(B) Lack of record. A written statement that after diligent search no record or entry of a specified tenor is bound to exist in the records designated by the statement, authenticated as provided in subdivision (A)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (A)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(C) Other proof. This rule does not prevent proof of official records or of entry or lack of entry therein by any other method authorized by law.

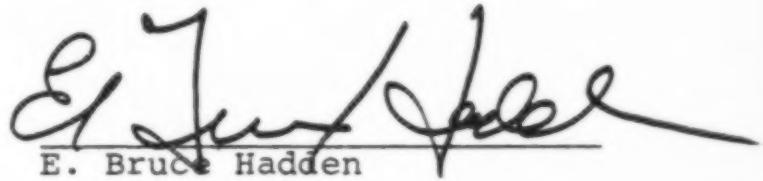
INDIANA WORKMEN'S COMPENSATION ACT

[40-1513]. Judgment of circuit or superior court on agreement or award--Modification.--Upon order of the industrial board made after five [5] days' notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the injury occurred, a certified copy of the memorandum of agreement approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said circuit or superior court unappealed from or affirmed on appeal or modified in obedience to the mandate of the Appellate Court [Court of Appeals], shall be modified to conform to any decision of the industrial board, ending, diminishing or increasing any weekly payment under the provisions of section 45 [22-3-3-27] of this act, upon the presentation of it of a certified copy of such decision.

CERTIFICATE OF SERVICE

I hereby certify that a copy of
the foregoing Reply Brief of Petitioner
was served on R. Jeffrey Schmidt, Esq.,
One Nationwide Plaza, 25th Floor,
Columbus, Ohio 43215, and on Thomas
Tripp, Esq., 165 North High Street,
Columbus, Ohio 43215, Attorneys for
Respondent, by U. S. Mail, postage
prepaid, this 9TH day of FEB,
1978.


E. Bruce Hadden